

Decision 02-04-047 April 22, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Expedited Approval of Servicing Agreement between State of California Department of Water Resources and Southern California Edison Company Pursuant to Chapter 4 of the Statutes of 2001 (Assembly Bill 1 of the First 2001-2002 Extraordinary Session).

Application 01-06-044  
(Filed June 25, 2001)

**O P I N I O N**

**Summary**

On March 29, 2002, Southern California Edison Company (SCE) filed a petition for expedited modification of Decision (D.) 01-09-014. D.01-09-014 was the decision which approved the Servicing Agreement between the California Department of Water Resources (DWR) and SCE.<sup>1</sup>

SCE's petition for modification seeks Commission approval of certain revisions to the Servicing Agreement as a result of changes ordered in D.01-09-014, and to make the Servicing Agreement consistent with the Rate

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<sup>1</sup> The Servicing Agreement sets forth the terms and conditions under which SCE will provide the transmission and distribution of DWR-purchased electricity, as well as billing, collection, and related services on behalf of DWR. The servicing agreement also addresses DWR's compensation to SCE for providing those services.

Agreement between DWR and the Commission that was approved in D.02-02-051, and with the February 28, 2002 Letter Agreement between SCE and DWR which was accepted by the Commission in D.02-03-058.

Today's decision approves the First Amended And Restated Servicing Agreement (Amended Servicing Agreement) entered into between SCE and DWR, and the petition for modification of D.01-09-014 is granted as set forth in this decision. A copy of the Amended Servicing Agreement is attached to this decision as Appendix A.

### **Background**

In January 2001, in response to the energy crisis facing California, the Legislature gave DWR the authority to purchase electricity and sell it to the retail customers of California's electric utilities. This authority was provided in Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB1X).

In March 2001, the Commission ordered SCE to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (D.01-03-081.) This arrangement was formalized in the Servicing Agreement that was entered into between SCE and DWR, and approved in D.01-09-014.

As a result of D.01-09-014, D.02-02-051, and D.02-03-058, SCE and DWR discussed and negotiated amendments and restatements to the Servicing Agreement. These changes are reflected in the Amended Servicing Agreement which the two parties signed on March 29, 2002.

In its petition for modification of D.01-09-014, SCE seeks to have the Commission resolve its petition on an expedited basis so as to facilitate the expeditious issuance of the bonds by DWR. SCE requests that the Commission

grant SCE's petition and approve the Amended Servicing Agreement at the April 22, 2002 Commission meeting. A ruling shortening the time for parties to respond to the petition was issued on April 4, 2002. No one filed any response to SCE's petition.

### **Summary of the Changes to the Servicing Agreement**

SCE attached two versions of the Amended Servicing Agreement to its petition for modification. Appendix A of SCE's petition is a "redlined" version of the Amended Servicing Agreement which shows all of the additions and deletions. Appendix B of SCE's petition is the executed version of the Amended Servicing Agreement without the redlining marks. Both versions of the Amended Servicing Agreement have been compared to the Servicing Agreement that was approved in D.01-09-014.

According to SCE's petition, the changes to the Amended Servicing Agreement are needed to implement certain provisions of the Rate Agreement between DWR and the Commission which was approved in D.02-02-051, to incorporate the February 28, 2002 Letter Agreement between SCE and DWR over the charges of the Independent System Operator (ISO),<sup>2</sup> and to incorporate the modifications ordered by the Commission in D.01-09-014. Among the changes to the Amended Servicing Agreement are the following:

- In D.02-02-051, the Commission stated that it may be necessary or desirable to make certain changes to the

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<sup>2</sup> This Letter Agreement was accepted by the Commission in D.02-03-058 as resolving the ISO charges. The Letter Agreement was subsequently amended by a March 18, 2002 letter to SCE from DWR to correct certain inadvertent errors and omissions in the Letter Agreement. A copy of the Letter Agreement and the March 18, 2002 amendment letter is attached to Appendix A of this decision.

Servicing Agreement to implement the Rate Agreement so as to facilitate the issuance of bonds by DWR. The Amended Servicing Agreement separates the DWR Charges between Power Charges and Bond Charges.

- The February 28, 2002 Letter Agreement provides for the treatment of Imbalance Energy and the allocation of ISO charges between SCE and DWR. Those items have been incorporated into the Amended Servicing Agreement.
- D.01-09-014 approved the Servicing Agreement with certain modifications. Those modifications have been incorporated into the Amended Servicing Agreement.

SCE requests that D.01-09-014 be modified by approving the Amended Servicing Agreement, and by adding new Finding of Fact 28, new Conclusion of Law 14, and adding Ordering Paragraph 9.

### **Discussion**

In deciding whether we should approve the Amended Servicing Agreement, a review of the three decisions cited by SCE are in order to determine if the changes conform to the decisions.

D.01-09-014 approved the Servicing Agreement, along with the revisions contained in Ordering Paragraphs 3, 4 and 5 of that decision. The changes contained in the Amended Servicing Agreement conform to the revisions ordered in D.01-09-014.

The Rate Agreement entered into between the Commission and DWR, and approved in D.02-02-051, established separate Bond Charges and Power Charges. The Rate Agreement recognizes that the Bond Charge for each customer will be based on the aggregate amount of power sold to the customer by an electrical corporation, DWR, and an electric service provider (ESP). D.02-02-051 acknowledged that the Rate Agreement allows the Commission to impose Bond

Charges on ESP power only after the Commission issues an order providing for such charges, and the order becomes final and unappealable. D.02-02-051 deferred to a future proceeding the issue of whether the power sold to ESPs should be subject to the Bond Charges.

The changes to the Amended Servicing Agreement reflect the unbundling of the DWR Charges into separate Bond Charges and Power Charges, that the Bond Charges be based on total connected load, that the Bond Charges include any exit fee that may be imposed by the Commission on the customers of the ESPs, and that the servicing agreement may be amended to facilitate the calculation and collection of an authorized exit fee.

We note that the paragraph number heading of “1.28.” was deleted from the definition of “DWR Charges” in both the redlined and executed versions of the Amended Servicing Agreement. This paragraph number heading should be reinserted.

The February 28, 2002 Letter Agreement between DWR and SCE addressed the treatment of Imbalance Energy, and the allocation of cost responsibility of ISO charges between SCE and DWR. Section 9 of the Letter Agreement required that DWR and SCE enter into an amendment to the Servicing Agreement which would include the Letter Agreement provisions. The Commission accepted the Letter Agreement in D.02-03-058 as resolving the ISO charges and for imbalance energy costs. The Amended Servicing Agreement incorporates the terms of the Letter Agreement.

All of the amendments and restatements that have been incorporated into the Amended Servicing Agreement are consistent with the changes and directives ordered in D.01-09-014, D.02-02-051, and with the Letter Agreement that was accepted in D.02-03-058.

D.01-09-014 should be modified as follows:

- (1) New Finding of Fact 28 should be added to read as follows:  
“SCE and DWR have negotiated the First Amended and Restated Servicing Agreement consistent with D.01-09-014, D.02-02-051 and D.02-03-058.”
- (2) New Conclusion of Law 14 should be added to read as follows: “SCE’s and DWR’s proposed amendments to the approved Servicing Agreement are reasonable and in the public interest, and should be adopted.”
- (3) Ordering Paragraph 9 should be added to read as follows:  
“The First Amended and Restated Servicing Agreement that was executed by and between DWR and SCE on March 29, 2002, attached as Appendix A of this decision, is approved.”

The Amended Servicing Agreement, which is attached to this decision as Appendix A, is approved.

### **Comments On Draft Decision**

Public Utilities Code Section 311(g)(1) generally requires that the draft decision be served on all parties, and be subject to at least 30 days of public review and comment prior to a vote of the Commission. However, the comment period may be waived “in an uncontested matter where the decision grants the relief requested.” (Rules of Practice and Procedure, Rule 77.7(f).) Since no one filed a response to SCE’s petition for modification of D.01-09-014, the comment period is waived.

### **Findings of Fact**

1. SCE filed a petition for modification of D.01-09-014 on March 29, 2002.
2. SCE’s petition seeks Commission approval of certain revisions to the Servicing Agreement as a result of the changes ordered in D.01-09-014, and to

make it consistent with the Rate Agreement approved in D.02-02-051, and with the February 28, 2002 Letter Agreement which was accepted by the Commission in D.02-03-058.

3. No one filed any response to SCE's petition.

### **Conclusions of Law**

1. All of the amendments and restatements to the Amended Servicing Agreement are consistent with the changes and directives ordered in D.01-09-014, D.02-02-051, and with the Letter Agreement that was accepted in D.02-03-058.

2. D.01-09-014 should be modified as specified in this decision.
3. D.01-09-014 should be modified as specified in this decision.
4. The comment period on the draft decision is waived.

## **O R D E R**

### **IT IS ORDERED** that:

1. The petition for modification of Decision (D.) 01-09-014, filed by Southern California Edison Company (SCE) on March 29, 2002, is granted as set forth below.

- (a) D.01-09-014 is modified by adding new Finding of Fact 28, which shall read as follows: "SCE and DWR have negotiated the First Amended and Restated Servicing Agreement consistent with D.01-09-014, D.02-02-051 and D.02-03-058."
- (b) D.01-09-014 is modified by adding new Conclusion of Law 14, which shall read as follows: "SCE's and DWR's proposed amendments to the approved Servicing Agreement are reasonable and in the public interest, and should be adopted."





- (c) D.01-09-014 is modified by adding new Ordering Paragraph 9, which shall read as follows: “The First Amended and Restated Servicing Agreement that was executed by and between DWR and SCE on March 29, 2002, attached as Appendix A of this decision, is approved.”

2. The “First Amended And Restated Servicing Agreement,” a copy of which is attached to this decision as Appendix A, is approved.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

# **APPENDIX A**

[Appendix A to Southern California Edison Company](#)